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OFFICE OF PETITIONS

In re Application of :
Kevin Fairbairn et al :
Application No. 10/680,656 : DECISION ON PETITION
Filed: October 6, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. :
AMAT/1571.C3/DSM/BCVD/JW :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 20, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition, under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The amendment seeks to add a claim for benefit of priority to Patent No. 6,152,070. However, the claim for benefit of priority must contain a reference to each application, identifying it by **application number (consisting of the series code and serial number)**. As the amendment to the specification references the patent number rather than the application number, the amendment fails to comply with the provisions of 37 CFR 1.78(a)(i).

Any further request for reconsideration should include a renewed petition under 37 CFR 1.78(a)(3) and an amendment complying with the provisions of 37 CFR 1.78(a)(i).

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Irvin Dingle at (571) 272-3210.


Frances Hicks
Petition Examiner
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